

REMARKS/ARGUMENTS

No amendments have been made to the claims or the specification. (Claims 1-38 and 41-53 were previously cancelled.) Claims 39 and 40 remain pending in the application. Applicants respectfully request reexamination and reconsideration of the application in view of the following remarks.

Initially, Applicants note that the listing of prior art in a form 1449 submitted with a Supplemental Information Disclosure Statement ("IDS") filed February 3, 2003 (signed January 31, 2003) has not been returned. In a Communication dated April 8, 2003, it is alleged that the Supplemental IDS does not comply with 37 CFR § 1.97(b). The Supplemental IDS was filed, however, before the mailing of a first office action after the filing of the Request For Continued Examination on January 31, 2003. Therefore, the Supplemental IDS complies with subsection (4) of 37 CFR § 1.97(b). Applicants consequently request that the Examiner consider the art cited in the Supplemental IDS and initial and return the form 1449 filed with the Supplemental IDS.

Claims 39 and 40 have been rejected under statutory type double patenting and obvious-type double patenting in view of claims 28-32 and 54-86 of copending application serial number 09/753,296 (hereinafter "the '296 application"). Applicants respectfully traverse these rejections.

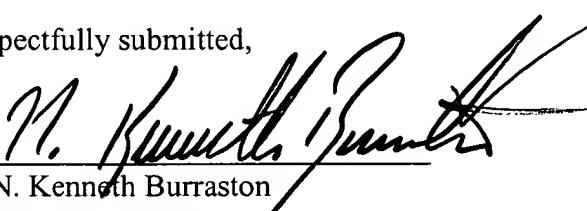
The instant application and the '296 application are both divisionals of U.S. patent application serial no. 08/794,202, now U.S. Patent No. 6,442,831 (herein after the "Parent"). A ten-way restriction requirement dated July 29, 1999 was issued in the Parent. (For the Examiner's convenience, the Restriction is attached hereto.) Claims 28-32 were identified as Group IV in that restriction and claims 39 and 40 were identified as Group VII. The '296 application was filed as a divisional of the Parent with the Group IV claims, and the instant application was filed as a divisional of the Parent with the Group VII claims. The ten-way restriction requirement in the Parent precludes the double patenting rejections now of the Group VII claims in view of the Group IV claims. MPEP § 804.1. For this reason alone both the statutory double patenting and the obvious-type double patenting rejections should be withdrawn.

In addition, the statutory double patenting rejection should be withdrawn for the additional reason that a *prima facie* case of statutory double patenting is not set forth in the Office Action. The wording of the claims 39 and 40 of the instant application is different than

the wording of claims 28-32 and 54-86 of the '296 application. Absent a showing in the Office Action that the wording in one set of claims, though different, has the *identical* meaning as the wording in the other set of claims (e.g., "36 inches" means exactly the same thing as "3 feet"), a statutory double patenting rejection is not proper. (See MPEP § 804, pg. 800-20, section "A" entitled "Statutory Double Patenting – 35 U.S.C. 101.") For this reason alone, the statutory double patenting rejection should be withdrawn.

In view of the foregoing, Applicants submit that the application is in condition for allowance. If the Examiner believes that a discussion with Applicants' attorney would be helpful, the Examiner is invited to contact the undersigned at (801) 536-6763.

Respectfully submitted,

By 
N. Kenneth Burraston
Reg. No. 39,923

Date: September 18, 2003

Parsons, Behle & Latimer PLC
P.O. Box 45898
201 South Main St., Suite 1800
Salt Lake City, Utah 84145-0898
Phone: (801) 536-6763
Fax: (801) 536-6111